

EQUAL=PAY

An Employer's Guide to Equal Pay



Our Nation's workforce includes more women than ever before. Working women comprise almost half of the U.S. labor force and are a growing number of breadwinners in their families. More women are also working in positions and fields that have been traditionally occupied by men.

Despite continued progress toward gender equality in the workplace, there still exists a significant earnings gap between women and men. The gap is larger for minority women and women with disabilities.

The gender earnings gap persists even when variables such as experience, education, industry and hours worked are controlled. Many economists have concluded that some – or all – of the remaining gap may be due to pay discrimination based on sex. Equal pay

is not just a women's issue. American families, our communities and the entire economy suffer as a result of this continuing pay disparity.

“Despite continued progress toward gender equality in the workplace, there still exists a significant earnings gap between women and men.”

This guide is designed to help employers understand the primary federal laws that govern equal pay and compensation, provide tips to monitor pay practices and identify resources to help ensure compliance with those laws.

MAJOR LAWS AFFECTING EQUAL PAY

There are five major federal laws addressing equal pay and compensation.

- Under the **Equal Pay Act**, all employers must pay equal wages to women and men in the same establishment for performing substantially equal work. The law covers jobs that require



WOMEN'S BUREAU
U.S. DEPARTMENT OF LABOR

substantially equal skill, effort and responsibility and are performed under similar working conditions. The law covers all forms of pay, including salary, overtime pay, bonuses, stock options, profit sharing and bonus plans, life insurance, vacation and holiday pay, cleaning or gasoline allowances, hotel accommodations, reimbursement for travel expenses and benefits. Unequal compensation can be justified only if the employer shows that the pay differential is attributable to a fair seniority, merit or incentive system, or a factor other than sex.

➤ **Title VII of the Civil Rights Act of 1964** (Title VII) prohibits employers with at least 15 workers from discriminating against their employees on the basis of their race, color, religion, sex or national origin in all terms and conditions of their employment, including pay. In addition to prohibiting different pay for men and women doing the same or similar job, Title VII prohibits the pay discrimination that results from steering women into lower-paying jobs, unfairly denying them promotions and other forms of discrimination that can impact pay.

➤ Both the Equal Pay Act and Title VII are enforced by the U.S. Equal Employment Opportunity Commission (EEOC). Many states and cities have similar fair employment practices agencies, which enforce state and local laws that prohibit employment discrimination. Some of these laws cover employers with fewer than 15 employees.



“Most private sector employees have the right to join together, with or without a union, to improve their wages and working conditions under the National Labor Relations Act.”

➤ The **Lilly Ledbetter Fair Pay Act of 2009** clarifies that each paycheck containing discriminatory compensation is actionable under Title VII. Under the act, an employee has up to 180 days (or 300 days in jurisdictions that have a local or state law prohibiting compensation discrimination on the same basis) to file a charge with the EEOC after the employer's most recent paycheck that reflects unequal wages in violation of Title VII.

➤ **Executive Order 11246** prohibits federal contractors, federally-assisted construction contractors and federal subcontractors from discriminating in employment decisions, including compensation, on the basis of race, color, religion, sex or national origin, when these entities' contracts or subcontracts exceed \$10,000.

➤ The **National Labor Relations Act (NLRA)** protects the rights of most private sector employees to join together, with or without a union, to improve their wages and working conditions. Section 7 of the NLRA prohibits employers from retaliating against their non-supervisory employees covered by the act for discussing their wages or working conditions with their colleagues as part of an effort to improve their working conditions, even if there is no union or formal organization involved in the effort. These employee rights are enforced by the National Labor Relations Board (NLRB).



Reviewing Your Pay Practices

LISTEN to what your managers and employees are saying. The following types of statements can be red flags telling you to review your pay practices:

- ◆ *"It is not our fault if they are bad negotiators for their own salaries."*
- ◆ *"We should be able to pay our workers what we want to pay them."*
- ◆ *"We can't talk about pay at work."*
- ◆ *"I assume everything is fair because no one is complaining."*
- ◆ *"I'm not sure who checks our compensation system for equality, but I know it's not me."*
- ◆ *"I'm not exactly sure what was used to decide this salary."*

LOOK at Whether and How You Monitor Your Pay Practices

- Designate individuals who will be responsible for monitoring pay practices and reviewing your compliance with federal, state and local anti-discrimination laws.
- Evaluate your compensation system at least annually for potential pay disparities based on race/ethnicity and gender.
- Evaluate all forms of compensation (starting salary, benefits, bonuses, shift differentials, overtime, training opportunities, separation pay, etc.).
- In addition to an annual assessment, throughout the year conduct periodic "spot" checks for potential compensation problems.

INCREASE TRANSPARENCY IN COMPENSATION

You may want to consider an open pay policy. An open pay policy allows workers to know how much their colleagues are earning. Such a policy can:

- Stop speculation about pay—workers will know they are being paid fairly.
- Make it clear that top performers are rewarded, which creates an incentive to work harder.
- Stop meritless complaints about unequal pay.
- Identify pay disparities so they can be fixed.

- Correct problems as soon as they are discovered.
- Conduct regular equal employment opportunity training on compensation to increase awareness.

- Evaluate how you assign your employees to specific jobs:

- Focus on job recruitment, placement and how pay is assigned to job classes.
- How are women and minorities placed in your workforce? Do you make assumptions about what they can or cannot do?
- Does your hiring process seek diversity in the qualified applicant pool?
- Do you offer career training or opportunities for both genders?

- If starting salaries and signing bonuses are negotiated, ensure that such a practice does not have an adverse impact on women or minority workers.
- Evaluate whether all workers have equal opportunity for advancement.

- Evaluate how pay raises and bonuses are determined to ensure that decisions are made in a non-discriminatory manner.
- Performance evaluations can impact pay. Periodically review your performance evaluation process and the ratings given to each employee to determine whether the process or the ratings unfairly disadvantage women, or any other protected class.



ASK FOR HELP

The previous examples and suggestions are only a starting point. There is no one correct way to conduct an appropriate evaluation of compensation practices for potential discrimination. Achieving legal compliance and a truly fair and equitable compensation system cannot be reduced to a checklist. You can obtain further compliance assistance from the resources listed below.

WHERE TO GO FOR HELP

U.S. Department of Labor

Phone: 1-866-4-USA-DOL

(TTY: 1-877-889-5627)

Web site: www.dol.gov

Women's Bureau

Phone: 1-800-827-5335

Web site: www.dol.gov/wb

Office of Federal Contract Compliance Programs

Phone: 1-800-397-6251

(TTY: 1-877-889-5627)

Web site: www.dol.gov/ofccp

U.S. Equal Employment Opportunity Commission

Phone: 1-800-669-4000

(TTY: 1-800-669-6820)

Web site: www.eeoc.gov

National Labor Relations Board

Phone: 1-866-667-6572

(TTY: 1-866-315-6572)

Web site: www.nlrb.gov